Supreme Court U.S.
FILED
JUL 13 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

In The

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1198

NOLDE BROTHERS, INCORPORATED,
Petitioner,

vs.

LOCAL NO. 358, BAKERY & CONFECTIONERY WORKERS UNION, AFL-CIO,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 21, 1976
CERTIORARI GRANTED MAY 19, 1976

E. L. Mendenhall, Inc., 926 Cherry St., Kansas City, Mo. 64106, 816-421-3030

TABLE OF CONTENTS

DOCKET ENTRIES 1

COMPLAINT 2

Exhibit B—George F. Nolde, Jr. letter of September 19, 1973 7

Exhibit C—Francis V. Lowden, Jr. letter of October 11, 1973 8

ANSWER 9

Exhibit A—Robert E. Gregory letter of August 20, 1973 13

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT 14

AFFIDAVIT OF GEORGE F. NOLDE III 15

Exhibit 1—Collective Bargaining Agreement ... 19

Exhibit 2—Robert E. Gregory letter of May 16, 1973 38

Exhibit 3—Robert E. Gregory letter of June 6, 1973 and attachment 39

Exhibit 4—Robert E. Gregory letter of August 20, 1973 41

Exhibit 5—Robert E. Gregory letter of September 7, 1973 42

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT 43

AFFIDAVIT OF ROBERT E. GREGORY 44

ORDER OF DISMISSAL 46

The following opinions, judgments and orders have been omitted in printing this appendix because they appear on the following pages in the printed Petition for Certiorari:

Memorandum Opinion dated September 19, 1974 of the United States District Court, Eastern District of Virginia A24-A33

Opinion dated October 23, 1975 of the United States Court of Appeals, Fourth Circuit A1-A22

Order denying petition for rehearing and suggestion for rehearing en banc dated November 26, 1975, United States Court of Appeals, Fourth Circuit A23

Order denying motion for stay of mandate dated December 3, 1975, United States Court of Appeals, Fourth Circuit A34

Order on remand dated December 9, 1975, United States District Court, Eastern District of Virginia A35-A36

DOCKET ENTRIES

73-663

Date	Proceedings
1973	
Dec. 26	Complaint, no jury, filed and summons issued.
1974	
Jan. 4	Marshal's return on summons, executed, filed.
Jan. 14	Motion for extension of time to file answer, filed by deft.
Jan. 14	Order granting leave to deft. to 1-31-74 to answer plf's complaint, ent. 1-14-74. Copies to counsel.
Jan. 31	Answer, no jury, filed.
May 2	Motion for Summary Judgment with affidavits filed by deft.
May 2	Memorandum in support of motion for summ. judgment, filed.
May 16	Order that plf. may respond in 10 days to deft's motion for summary judgment, ent. 5-16-74. Copies mailed counsel.
June 10	Pltf's Response & cross-motion for Summ. judgment, filed.
June 17	Deft's Response to pltf's cross-motion for summ. judgment, filed.
June 20	IN OPEN COURT: Merhige, J. Halasz, OCR Appearances: Parties by counsel. Matter came on for hearing on motions. OCR excused upon agreement of counsel. Deft's motion for summary judgment heard. Motion taken under advisement by the Court. Pltf's cross-motion for summary judgment heard. Motion taken under advisement by the Court. (30 Mins.)

Sept. 19 Memorandum filed.

Sept. 19 Order denying plaintiff's motion for summary judgment, defendant's motion for summary judgment is granted and the complaint herein stands dismissed, ent. 9-19-74 and filed. Copies to all counsel of record.

Oct. 11 Notice of appeal filed by Local 358.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Civil Action
No. 73-663-R

LOCAL NO. 358, BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION, AFL-CIO,
Plaintiff,

vs.

NOLDE BROS., INC.,
Defendant.

COMPLAINT
(Breach of Collective Bargaining Agreement)
(Filed December 26, 1973)

1. This Court has jurisdiction of this cause of action under Section 301 of the Labor-Management Relations Act, 29 USC §185, and the United States Arbitration Act, Title 9 USC.

2. Plaintiff, hereinafter called the "Union," is an unincorporated association, a labor organization representing employees in an industry affecting commerce, having its principal place of business in Richmond, Virginia.

3. Defendant, Nolde Bros., Inc. hereinafter called the "Company," is a Virginia corporation, with its principal place of business in Richmond, Virginia and is engaged in the production and distribution of bakery products in and affecting interstate commerce.

4. The Union has been for many years in collective bargaining relationship with the Company regarding the wages, hours and working conditions in the Company's Norfolk plant and the most recent contract is dated July 28, 1970. A copy of this contract is attached hereto, marked Exhibit A.

5. Article IX, titled "Wages" of such collective bargaining agreement provides, *inter alia*, that:

> Section 5. Each full-time employee who is permanently displaced from his employment with the Company by reason of the introduction of labor saving equipment, the closing of a department, the closing of an entire plant, or by layoff, shall be employed by the Company for a period of at least three (3) years. An eligible employee's compensation for his displacement shall be on the basis of thirty (30) hours of severance pay, at his straight time hourly rate, for each full year or major portion of a year of active employment commencing with the fourth (4th) year following his most recent date of hire. Payment under this formula shall be limited to a maximum of nine hundred (900) hours of severance pay.
>
> Section 6. No severance pay will be paid to an eligible employee if he:
>
> (a) accepts employment in another plant of

the Company; or

(b) is voluntarily or involuntarily separated from his employment prior to the date he would otherwise be displaced for one of the reasons stated in Section 5 above.

Section 7. In the event an eligible employee wishes to remain on the plant seniority list, for the purpose of possible recall, he may elect to defer acceptance of his severance pay for a period of twelve (12) months. At any time during such period however, he may request his severance pay and his rights of recall and seniority shall terminate as of that date.

If such employee has not been recalled by the end of the twelve (12) month period he shall be paid his severance pay and his rights of recall and seniority shall terminate as of that date.

6. Article XII of the Agreement provides for final and binding arbitration of disputes arising under the Agreement.

7. In August, 1973, the Company, following a breakdown in the negotiation of a new collective bargaining agreement, announced that it was closing the plant permanently. The Union then requested the Company's assurances that the vacation and severance pay due the employees would be paid promptly. On September 19, 1973, the Company advised that it was in the process of calculating vacation pay and would forward it upon completion of such calculations. However, the Company advised that it was under no obligation to pay severance pay. A copy of the Company's letter is attached hereto as Exhibit B.

8. On October 2, 1873, following its unsuccessful attempts to resolve the dispute, the Union requested arbitration of the matter. By letter of October 11, 1973, the attorney for the Company advised the Union that its request for arbitration was denied since in the Company's view, termination of the Agreement of July 28, 1970 nullified the Company's obligation to arbitrate. A copy of that letter is attached as Exhibit C.

9. On October 19, 1973, the Union, through its attorneys, once more demanded arbitration of the vacation and severance pay issues. The Union pointed out that vacation and severance pay are vested rights accruing under the Agreement and that the right to these benefits does not expire under the Agreement. A copy of that letter is attached as Exhibit D hereof.

10. The Company has refused to comply in any manner with respect to severance pay obligations under said contract and has refused to provide the employees the severance pay due to them. Since, the employees have to their credit many years of seniority, the rights of severance pay have been built up over a good many years. For the Company now to seek to cancel its obligations is a clear violation of the vested property rights of said employees. As the Agreement of July 28, 1970, makes clear by its terms, severance pay is deferred "Wages" and it is wrongful of the Company to deprive these employees of monies they have earned over the years.

11. Vacation pay is deferred wages and since the employees have built up their rights to vacation pay based upon length of service, it is wrongful on the part of defendant Company to refuse to make payment of the vacation pay which has been earned by the employees during their years of service.

12. The Company has wrongfully and in violation of the collective bargaining agreement refused to submit to arbitration the questions concerning its obligations to pay severance and vacation pay.

WHEREFORE, plaintiffs request that this Court:

(1) issue judgment directing the defendant to submit to arbitration on the questions herein referred to and to proceed with said arbitration to final award; *or*

(2) in the alternative, grant plaintiffs direct and full relief on the questions herein referred to, including, but not limited to, an award of all severance pay and vacation pay monies due, plus interest; *and*

(3) award the plaintiffs the costs and disbursements of this action, attorneys fees and such other relief as the Court shall find appropriate.

Local No. 358, Bakery and Confectionery Workers International Union, AFL-CIO

By /s/ JJL
Counsel

Jay J. Levit
Stallard & Levit
1223-29 Cen. Natl. Bank Bldg.
Richmond, Virginia 23219

Ronald Rosenberg
Van Arkel & Kaiser
Suite 701, 1828 L Street, N.W.
Washington, D. C. 20036

Exhibit B

NOLDE BROTHERS
BAKERY
2520 East Broad Street
Richmond, Virginia 23223

September 19, 1973

Mr. Robert E. Gregory
Local No. 358
3108½ West Leigh Street
Richmond, Virginia 23230

Dear Mr. Gregory:

I have enclosed a copy of our Norfolk seniority list as you requested in your letter of September 7, 1973. We are currently in the process of calculating the vacation pay and will forward this to you as soon as it is completed.

Regarding your request for severance pay, Nolde Brothers Inc. is under no obligation to pay severance pay because any obligation on behalf of Nolde Brothers Inc. with respect to severance pay, ceased upon your termination of the collective bargaining agreement by your letter of August 20, 1973.

Sincerely,

Nolde Bros., Inc.
/s/ George F. Nolde, Jr.
George F. Nolde, Jr.
President

GFNjr/dw

Exhibit C

HUNTON, WILLIAMS, GAY & GIBSON
700 East Main Street P.O. Box 1535
Richmond, Virginia 23212
Telephone (804) 649-3661
Cable Huntwand

October 11, 1973

Mr. Robert E. Gregory
Bakery and Confectionery Workers'
International Union of America,
Local No. 358
3108-1/2 West Leigh Street
Richmond, Virginia 23230

Dear Mr. Gregory:

George F. Nolde, Jr., has referred to me your letter of October 2, 1973. As you know the obligation of Nolde Bros., Inc. to arbitrate any matter arising out of the collective bargaining agreement between itself and Local No. 358 covering the employees at the Norfolk bakery was an obligation founded only under the contract. When you chose to terminate the collective bargaining agreement, you nullified the entire contract, including the duty to arbitrate over a matter which arose after the agreement had lapsed.

Your request for arbitration is therefore denied. Should you have any further need to discuss this particular matter further, I would appreciate your contacting me directly rather than Mr. Nolde.

Very truly yours,

/s/ Francis V. Lowden, Jr.
Francis V. Lowden, Jr.

124/290

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division
(Title Omitted in Printing)

ANSWER

(Filed January 31, 1974)

Defendant, Nolde Bros., Inc., for its answer to the Complaint filed in the above matter says as follows:

1. With respect to the allegations in paragraph 1 of the Complaint Defendant denies that Plaintiff has properly invoked the jurisdiction of this Court under Section 301 of the National Labor Relations Act, 29 U.S.C. § 185 or under the United States Arbitration Act, 9 U.S.C. § 4, because there is not a written collective bargaining agreement in existence between the Plaintiff and Defendant and the existence of such a contract is a jurisdictional prerequisite for an action to proceed under 9 U.S.C. § 4 or 29 U.S.C. § 185.

2. Defendant admits the allegations in paragraph 2 of the Complaint.

3. Defendant admits the allegations in paragraph 3 of the Complaint.

4. Defendant admits that Plaintiff Union and Defendant Company have been parties to collective bargaining agreements wherein the subject matter concerned wages, hours and general working conditions for certain employees employed at Defendant's Norfolk Bakery plant. The last such collective bargaining agreement between the parties was entered into on or about July 28, 1970 and expired on August 27, 1973. There has been no collective bargaining contract in existence

between the parties covering the Norfolk Bakery since August 27, 1973.

5. With respect to paragraph 5 of the Complaint Defendant states that the language of the expired contract between the parties speaks for itself, but further answering Defendant denies that the provisions cited by Plaintiff have had any force or effect after August 27, 1973.

6. With respect to paragraph 6 of the Complaint Defendant states that the language of the expired contract between the parties speaks for itself, but further answering Defendant denies that the provisions cited by Plaintiff have had any force or effect after August 27, 1973.

7. Defendant denies the allegations contained in paragraph 7 of the Complaint, and further answering, states that on July 19, 1973 and on August 10, 1973 Plaintiff and Defendant conducted negotiations to seek a new collective bargaining agreement. The previous agreement was due to expire on July 21, 1973, although by its own terms the contract would continue in effect until a new agreement was reached or until the old agreement was terminated by either party upon seven (7) days notice. Such notice of termination was in fact given by Plaintiff by letter of August 20, 1973 (a copy of which is attached as Exhibit A) thereby terminating the collective bargaining agreement effective August 27, 1973. Thereafter, at a bargaining session on August 31, 1973, Plaintiff notified Defendant that its members had rejected Defendant's last offer. Plaintiff's representative then stated that unless the Defendant agreed to Plaintiff's last demand it would initiate a strike against Defendant. Defendant then determined

that it could not economically survive a strike and therefore announced the Bakery would permanently close effective August 31, 1973. Defendant subsequently paid all wages and accrued benefits, including vacation pay for vacations earned and due employees as of the date of the expiration of the agreement, i.e., August 27, 1973. Wages were also paid for any work performed after the expiration of the contract but prior to the permanent closing of the plant.

8. With respect to the allegations contained in paragraph 8 of the Complaint Defendant states that on October 2, 1973, Plaintiff did request Defendant to arbitrate the question of severance pay due under the expired agreement. Defendant notified Plaintiff that it was under no duty to arbitrate with respect to any grievance between the parties which arose after the expiration of the contract since the obligation to arbitrate such matters ceased after the Plaintiff caused the contract to be terminated.

9. Defendant admits to the existence of a letter dated October 19, 1973 from Plaintiff's counsel, but denies all allegations with respect to the legal status of any contractual matter between the parties.

10. Defendant denies all allegations in paragraph 10 of the Complaint, but states that it has refused to agree to submit to arbitration any disagreement which may exist between the Plaintiff and Defendant where the circumstances of such disagreement arose after August 27, 1973, the expiration date of the collective bargaining agreement between the parties.

11. Defendant denies the allegations contained in paragraph 11 of the Complaint, and further answering, states that vacation pay earned under the collective

bargaining agreement up to its expiration date of August 27, 1973, has been paid to all prior employees so entitled.

12. Defendant denies the allegations contained in paragraph 12 of the Complaint.

With respect to the prayer of the Complaint Defendant denies that Plaintiff is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

First Defense: The Complaint contains no allegation that there is a written collective bargaining agreement in existence between Plaintiff Union and Defendant Company under which a duty to arbitrate existed at the time the disagreement arose between Plaintiff and Defendant. Without such a written extant contract this Court does not have jurisdiction over the subject matter contained in the Complaint.

Second Defense: The allegations contained in the Complaint fail to present any material facts as against unsupported legal conclusions and therefore the Complaint fails to state a claim against Defendant upon which relief can be granted.

Third Defense: With respect to any claim of vacation pay due under the expired agreement, Defendant states that any and all monies due have been paid and Defendant thereby pleads full accord, satisfaction and payment for any such claim to vacation pay.

Fourth Defense: With respect to any claim of breach of contract by Plaintiff against Defendant, the Defendant affirmatively states that Plaintiff is estopped from seeking any contractual relief, or in the alternative,

has waived any right to a contractual remedy by its conduct both prior to and after the expiration of the collective bargaining agreement previously in existence between the parties.

WHEREFORE, having duly answered, Defendant prays that this action be dismissed with prejudice and that Defendant be awarded its costs herein expended, including reasonable attorneys' fees.

Nolde Bros., Incorporated
By /s/ Jay T. Swett

Francis V. Lowden, Jr.
Jay T. Swett
Hunton, Williams, Gay & Gibson
700 East Main Street
Richmond, Virginia 23219

Exhibit A

BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA
LOCAL NO. 358
3108½ West Leigh Street, Richmond, Virginia 23230
Phone 359-6536

August 20, 1973

Mr. George F. Nolde, Jr., President
Nolde Brothers Bakery
2520 East Broad Street
Richmond, Virginia 23223

Dear Mr. Nolde:

This is to notify you that the Bakery and Confectionery Workers International Union of America,

Local No. 358, hereby gives seven days notice, in accordance with Article XIX of its current labor agreement, to cancel its current labor agreement covering the Company's Norfolk, Virginia Plant.

Very truly yours,

/s/ Robert E. Gregory
Robert E. Gregory
Business Representative

REG:jc
Certified Mail - Return Receipt Requested

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division
(Title Omitted in Printing)

MOTION FOR SUMMARY JUDGMENT

(Filed May 2, 1974)

Defendant, Nolde Brothers, Inc., respectfully moves the Court to grant summary judgment in its favor as to all of the matters raised in plaintiff's complaint. There are no genuine issues of material fact and defendant is entitled to a judgment as a matter of law. Defendant asks that the Court grant its Motion for Summary Judgment on the pleadings filed herein, on the affidavit of George F. Nolde, III and on the

Memorandum of Law in Support of Motion for Summary Judgment filed herewith.

Respectfully submitted,

Nolde Brothers, Inc.

By /s/ Francis V. Lowden, Jr.

Francis V. Lowden, Jr.
Jay T. Swett
Hunton, Williams, Gay & Gibson
P. O. Box 1535
Richmond, Virginia 23212

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division
(Title Omitted in Printing)

AFFIDAVIT

I, George F. Nolde, III, of the City of Richmond, State of Virginia, being first duly sworn, state the following:

I am the Treasurer of Nolde Brothers, Incorporated, whose address is 2520 East Broad Street, Richmond, Virginia. In addition to my functions as Corporate Treasurer, my duties also include representation of the Company in collective bargaining negotiations for the Company's plants.

Prior to August 31, 1973, the Company operated a bakery plant in Norfolk, Virginia. The Norfolk bakery's production and maintenance employees were represented by Local No. 358 of the Bakery and Con-

fectionery Workers International Union of America, AFL-CIO. Company records indicate that there have been collective bargaining agreements between Local No. 358 and the Company setting forth wages and conditions of employment for the Norfolk bakery since at least 1961. The last such agreement was for a three year period which, according to its terms, was in effect from July 19, 1970 until July 21, 1973. A copy of this agreement is attached to this Affidavit as Defendant's Exhibit No. 1.

During May of 1973, the Company received a letter dated May 16, 1973, from the Business Agent of Local No. 358. This letter is attached to this Affidavit as Defendant's Exhibit No. 2. In this letter the Union's Business Agent, Mr. Robert Gregory, notified the Company that the Union wished to open the contract for negotiating various changes. On or about June 6, 1973, the Company received the Union's initial proposal for modifying the contract. This proposal is attached to this Affidavit as Defendant's Exhibit No. 3.

The first negotiating session was held on July 19, 1973. Present at that meeting representing the Union was Mr. Gregory and representing the Company were Mr. George Nolde, Jr., myself and the Company's attorney, Francis V. Lowden, Jr., Esquire. During this meeting the Union requested a wage increase of 20 cents per hour for each year of the new contract and an increase of 22 cents per hour in fringe benefits. These requests were in addition to the contract proposals forwarded to the Company on June 6, 1973.

A second meeting was held on August 10, 1973. Mr. Gregory represented the Union and representing the Company were myself, Mr. Lowden and Mr. J. T.

Swett. During this meeting Mr. Gregory asked for a 16 cent per hour increase during the first year, and an 18 cent per hour increase for the second year of the contract in addition to a 14 cent per hour increase in fringe benefits.

The Union's offer was declined and during the second meeting the Company representative sought a six-month extension to the contract. The Company also offered a seven cent per hour increase in the pension plan retroactive to July 22, 1973 and some minor fringe benefit changes. During the August 10, 1973 meeting, the Union Business Agent showed the Company representatives a letter from the Bakery and Confectionery Workers International Union. Mr. Gregory stated that the letter from the International authorized Local No. 358 to call a strike at the Norfolk bakery if negotiations were not successful. The Union representatives were told that the Company could not stand a strike and a strike would definitely be the end of the bakery in Norfolk.

Some time after the August 10, 1973, meeting the Company learned that the members of Local No. 358 at the Norfolk bakery voted to reject the Company's last offer. The Company also received a letter dated August 20, 1973 from the Business Agent of Local No. 358 giving the seven-day written notice to terminate the labor contract. A copy of this letter is attached as Defendant's Exhibit No. 4.

A third and final negotiating session was held on August 31, 1973. Present at that meeting were Mr. George Nolde, Jr., myself, Mr. Lowden and Mr. Swett representing the Company. Mr. Gregory and Mr. Marvin Wallace represented the Union. Mr. Gregory

stated that the Norfolk employees had rejected the Company's last offer. Mr. Gregory also acknowledged that at that time the employees were temporarily working without a contract since his August 20, 1973 letter had terminated the old agreement as of August 28, 1973. The Company was told by Mr. Gregory that the Company must meet the Union's last proposal or the employees would go out on strike and establish a picket line at the Norfolk plant beginning on Tuesday, September 4, 1973.

A recess in the negotiations was called to discuss the ramifications of the Union's demands. We concluded that it was not economically feasible to operate the Norfolk bakery under the terms and conditions that were being demanded by the Union. It was also concluded that the Norfolk bakery could not withstand a strike because of the great many customers who would be permanently lost. Therefore, it was decided that the Norfolk operation would have to close.

Mr. George Nolde, Jr. then instructed Mr. Lowden that they should return to the meeting and Mr. Lowden should instruct the Union that the Norfolk bakery would be permanently closed effective the close of business on that day, August 31, 1973.

The Company sent telegrams to the Norfolk employees informing them of their termination due to the closing of the plant. Subsequently, the Union Business Agent requested that the Company calculate the amount of severance pay and vacation pay that would be due the Norfolk employees. A copy of this letter is attached to this Affidavit as Defendant's Exhibit No. 5.

The Company did calculate the vacation pay which had been earned, but not taken, prior to the expiration

date of the contract. This vacation pay was paid. However, it was discovered during the preparation for this case that not all the vacation pay was paid due to an error in the formula used. The Company is now in the process of correcting this error.

The Company declined to pay any severance pay since there was no contract at the time of the plant closing. A subsequent request for arbitration over severance pay was also declined.

/s/ George F. Nolde, III
George F. Nolde, III

(Jurat Omitted in Printing)

Exhibit 1

AGREEMENT

THIS AGREEMENT, made and entered into this 28th day of July, 1970, by and between NOLDE BROTHERS, INCORPORATED, for their Norfolk, Virginia plant, hereinafter called "Company" and Bakery and Confectionery Workers International Union of America, Local No. 358, affiliated with the Bakery and Confectionery Workers' International Union of America, AFL-CIO, hereinafter called "Union".

The joint purpose of this agreement is to secure industrial peace and efficiency, enabling the Company and its employees to provide, as far as economic conditions may permit, security and continuity of employment, and to set forth a basic understanding relative to rates of pay, hours of work, and conditions of employment.

ARTICLE I

RECOGNITION AND REPRESENTATION

Section 1. The Company hereby recognizes the Union as the exclusive representative for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment of the employees at the Company's Norfolk, Virginia plant, in classifications listed in Appendix A hereto.

Section 2. During the first thirty (30) days of employment, the Company shall be the sole judge of whether an employee shall be continued in employment.

Section 3. When and if the appropriate laws permit, a Union security clause will be inserted in the Agreement. This Union security clause shall only become effective after all regulations regarding such Agreements have been complied with in full.

ARTICLE II

SENIORITY

Seniority shall be on a plant-wide basis for promotions, lay-offs, and recalls. Job vacancies shall be posted and open for bids for 72 hours. Vacancies shall be filled on the basis of seniority and ability equally considered.

Promoted employees shall be on trial on the new job for not longer than fifteen (15) days.

Job classification seniority will rule for the selection of shifts and hours at time of permanent vacancies and in case of demotions, providing qualifications are fitting.

The Company agrees to notify the Union every two weeks of all new employees hired and any lay-offs.

There shall be no obligation on the Employer to recall an employee who has been on lay-off for twelve (12) months.

ARTICLE III

HOLIDAYS

Section 1. All employees shall receive the following holidays with eight (8) hours' straight time pay: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day; provided, however, that in order to receive pay for any such holiday the employee must have been at work on the workday next preceding and the workday next following such holiday; and provided further that employees may be required to work on such holiday if given another day in said work week for such holiday or the holiday pay hereinabove provided for in addition to the regular pay for time worked during said week. Absences due to bona fide sickness prior to and after a holiday shall be excusable and the employee shall receive his or her holiday pay, providing such employee has performed work within two (2) weeks prior to the holiday week or during the holiday calendar week. Overtime at the rate of time and one-half to be paid after thirty-two (32) hours in a holiday week.

Section 2. The employee's birthday shall be an additional holiday.

(a) If an employee's birthday falls on a scheduled day off, eight (8) hours, at straight time pay, shall be added to his pay. (Article VI, Section 7, shall not apply to fifth day worked in a birthday week.)

(b) If an employee's birthday falls within a holiday work week, he shall be given the holiday seven (7) days thereafter.

(c) Where a number of employees' birthdays fall on the same day, so that production difficulties are involved, the holiday for such employees shall be rescheduled according to seniority.

ARTICLE IV

VACATIONS

Section 1. Each full time employee is entitled to one week's vacation after one year's service, two (2) weeks' vacation after two (2) years' service, three (3) weeks' vacation after nine (9) years' service, and four (4) weeks' vacation after eighteen (18) years' service.

Effective January 1, 1971, the service requirement for the third (3rd) week of vacation shall be reduced to eight (8) years.

Effective January 1, 1972, the service requirement for the fourth (4th) week of vacation shall be reduced to seventeen (17) years.

Effective January 1, 1972, each employee with twenty-five (25) or more years of service shall be entitled to a vacation benefit of five (5) weeks.

Section 2. The anniversary date of employment shall be adjusted by periods of lay-offs or leaves of absence for the purpose of computation of vacation benefits only.

Section 3. Vacation pay shall be based on straight time at the employee's regular hourly rate for the average number of hours worked by the employee in the

thirteen (13) weeks preceding the vacation period, not including holiday weeks or weeks in which time is lost on account of sickness, with a minimum of forty (40) hours' pay and a maximum of forty-eight (48) hours' pay for each week of the vacation allowance.

Section 4. Preference in the assignment of vacation periods shall be on a seniority basis, subject to the maintenance of regular production schedules.

Section 5. If one of the holidays listed in Article III falls within an employee's vacation, he or she shall be paid a sum equal to eight (8) hours' straight time pay in addition to vacation pay. All employees to receive their vacation pay before the vacation starts.

Section 6. A regular employee who has completed at least one year of service and is discharged, laid off, or resigns, before having satisfied the requirements for a full vacation shall be entitled to pro-rata vacation payment in lieu of time off, based on the number of months of continuous service worked beyond his last anniversary date of employment. It is further understood that said employee must have worked a minimum of sixty (60) days beyond said anniversary date to be eligible for a pro-rated vacation payment. Pro-rated vacation payments shall be based on one-twelfth (1/12) of a full vacation (as outlined in Section 1 of this Article) for each month worked for which the employee has not received a vacation. This clause shall be applicable to employees who are inducted under the Selective Servicemen's Act.

ARTICLE V

UNION BENEFITS

Section 1. The Company agrees, if humanly possible, to give time off without pay to any officer of the Union, who may have any Union business to which he has to attend. Also, in the event that the Union should select a Business Representative from the employees who may be employed by the Company, the Company agrees to let said employees leave the employ of the Company with the understanding that he may return at any time with comparable standing and seniority.

Section 2. Bulletin Boards to be placed at each time clock shall be furnished by the Company for Union notices, which will first be submitted for approval of the management. A signed copy of this contract will be posted on each bulletin board.

Section 3. The Business Representative, bearing credentials from the Union, shall be allowed in any shop during working hours, upon securing permission from the Manager and provided there shall be no interference with work.

Section 4. During the life of this Agreement and, in accordance with the provisions of Section 302 (c) of the Labor-Management Relations Act of 1947 and with the terms of a form of authorization for check-off of dues agreed to by the parties hereto, the Company agrees to deduct union membership dues and/or initiation fees, levied in accordance with the constitution and by-laws of the "Union", from the pay of each employee who signs the authorization.

Check-off deductions shall begin with the month following the month that the Company receives the authorization. Thereafter, the Company will deduct the membership dues and/or initiation fees from the first pay period in each succeeding month in which the employee has sufficient net earnings to cover the union membership dues and/or initiation fees.

ARTICLE VI

HOURS OF WORK AND OVERTIME

Section 1. The regular work week shall be forty (40) hours to be completed in not more than five (5) days.

Section 2. Each full time employee who reports for work, upon request, as required by his department's schedule is guaranteed pay for such week equivalent to not less than forty (40) hours at the employee's regular straight time hourly rate. This guarantee of forty (40) hours' pay is contingent upon there being no emergency condition, beyond the Company's control, which prevents or interferes with the normal operation of the business.

Section 3. Each employee who reports for work upon request on any one day, as required by his department's schedule, shall be guaranteed not less than seven (7) hours pay for that day at his regular straight time hourly rate, provided he does whatever work is assigned to him.

Section 4. Each employee shall be paid for all work performed in excess of eight (8) hours per day or forty (40) hours in any one week at the rate of one and one-half (1½) times the employee's regular straight time hourly rate.

Section 5. Each employee who is required to work six days in any regularly scheduled work week shall be paid at the rate of one and one-half (1½) times his regular straight time hourly rate of pay for all hours worked on such employee's sixth day.

Section 6. Each employee who is required to work seven days in any regularly scheduled work week shall be paid at the rate of twice his regular straight time hourly rate of pay for all hours worked on such employee's seventh day.

Section 7. During a holiday week each employee who is required to work five days shall be paid at the rate of time and one-half his regular straight time hourly rate of pay for all hours worked on such employee's fifth day, and each employee who is required to work six or seven days shall be paid at the rate of twice his regular straight time hourly rate of pay for all hours worked on such employee's sixth or seventh day.

Section 8. There shall be no pyramiding of overtime premium payments under any of the provisions of this contract, that is, the same hours shall not be reflected more than once for overtime purposes but shall be paid for on the applicable daily basis, or weekly basis, whichever is the greater, but not on both.

Section 9. Each employee who works between the hours of 6:00 P. M. and 6 A. M. shall be paid for all work between such hours, in addition to the regular pay to which he would be otherwise entitled, night premium compensation of seven cents (7¢) per hour at straight time.

Section 10. Necessary physical relief will be granted without discrimination from any source.

Section 11. Each employee shall have a rest period of at least twelve (12) hours between each day's work and an intermission of at least thirty-six (36) hours on the days each week on which he is regularly scheduled off. Employees scheduled off two consecutive days shall have an intermission of fifty-four (54) hours. Hours taken from the rest period or intermission shall be paid for at the overtime rate of time and one-half.

Section 12. Maintenance and/or garage mechanics called in outside of regular working hours shall be guaranteed not less than two (2) hours' pay at time and one-half their regular straight time hourly rate plus one (1) hour's traveling time at their straight time hourly rate for such call.

Maintenance and/or garage mechanics receiving pay under this section shall not receive additional compensation for the same hours under Section 11 of this same Article.

Section 13. No employee shall be given time off for the purpose of offsetting overtime.

Section 14. Each employee shall have a lunch period of thirty (30) minutes after three hours and completed before 5½ hours of work, which lunch period will not be paid for or be included in working hours.

Section 15. Schedules shall be posted on Friday showing the working days of all employees for the following week.

Section 16. The Company shall have the right to employ per diem personnel to be known as jobbers.

Section 17. Each employee shall be given a ten (10) minute paid rest period before and after lunch

each day. If an employee is going to be required to work nine (9) or more hours he shall also be given an additional ten (10) minute rest period as near after the end of his eighth (8th) hour of work as possible.

ARTICLE VII

GROUP INSURANCE

Section 1. The Company agrees to maintain its present group insurance plan during the terms of this agreement with the following improvements:

Effective August 1, 1970, daily Room and Board Benefits shall be up to $40.00 per day.

Effective August 1, 1970, Hospital Miscellaneous Benefits shall be up to $800.00 per disability.

Effective August 1, 1972, Daily Room and Board Benefits shall be up to $50.00 per day.

Effective August 1, 1972, Hospital Miscellaneous Benefits shall be up to $1,000.00 per disability.

Effective August 1, 1972, X-Ray and Lab Fees outside of hospital up to $50.00.

ARTICLE VIII

NATIONAL PENSION FUND

Section 1. The Company hereby agrees to be bound as a party by all the terms and provisions of the Agreement and Declaration of Trust dated January 13, 1958, as amended, establishing the American Bakery and Confectionery Workers' Union and Industry Pension Fund (hereinafter called the Fund), and said Agreement is made part hereof by reference.

Section 2. The Company agrees to pay to the Fund the sum of sixteen cents (16¢) for each hour for which employees receive pay as required under the provisions of this collective bargaining agreement, provided that in no event shall such contribution by the Company for an employee for any one week exceed the sum of six dollars and forty cents ($6.40).

Effective August 1, 1971, such contribution shall be twenty-two cents (22¢) for each hour not to exceed eight dollars and eighty cents ($8.80) per week.

Effective August 1, 1972, such contribution shall be twenty-six cents (26¢) for each hour not to exceed ten dollars and forty cents ($10.40) per week.

Section 3. The payments made in accordance with Section 2, above shall be allocated as follows:

Sixteen cents (16¢) per hour to provide coverage under Plan A;

Effective August 1, 1971, twenty-two cents (22¢) per hour to provide coverage under Plan A.

Effective August 1, 1972, twenty-six cents (26¢) per hour to provide coverage for an Age and Service Pension (Plan C).

Section 4. The payments so made to the Fund shall be used by it to provide retirement benefits for eligible employees in accordance with the Pension Plan of said Fund, as determined by the Trustees of said Fund, to be applied to the eligible employees based on the amount of the Company contribution. The Company hereby affirms that he has no arrangement providing for the compulsory retirement of his employees except as specifically set forth herein.

Section 5. It is understood and agreed that the Pension Fund referred to herein shall be such as will qualify for approval by the Internal Revenue Bureau of the United States Treasury Department, so as to allow the Company an income tax deduction for the contributions paid hereunder.

Section 6. This Article encompasses the sole and total agreement between the Company and the Union with respect to pensions or retirement.

Section 7. This Article is subject in all respects to the provisions of the Labor-Management Relations Act of 1947, as amended, and to any other applicable laws.

Section 8. Effective August 1, 1970, employees employed in the Garage and Thrift Store shall be covered under the Fund.

ARTICLE IX

WAGES

Section 1. The rate of pay of employees covered by this Agreement shall be not less than the rate appearing in Schedule "A" attached hereto and made a part hereof.

Section 2. There shall be no reduction of wages of any employee who receives more per week than provided for in this Agreement.

Section 3. Under no circumstances shall employees be paid less than their regularly weekly or hourly rate even though at times they are used on less paying jobs unless permanently transferred.

Section 4. If an employee be assigned to a higher paid job or jobs for more than one-half hour per day,

he shall be paid the rate of the higher paid job for the time used.

Section 5. Each full-time employee who is permanently displaced from his employment with the Company by reason of the introduction of labor saving equipment, the closing of a department, the closing of an entire plant, or by lay off, shall be compensated for such displacement providing he has been actively employed by the Company for a period of at least three (3) years. An eligible employee's compensation for his displacement shall be on the basis of thirty (30) hours of severance pay, at his straight time hourly rate, for each full year or major portion of a year of active employment commencing with the fourth (4th) year following his most recent date of hire. Payment under this formula shall be limited to a maximum of nine hundred (900) hours of severance pay.

Section 6. No severance pay will be paid to an eligible employee if he:

(a) accepts employment in another plant of the Company; or

(b) is voluntarily or involuntarily separated from his employment prior to the date he would otherwise be displaced for one of the reasons stated in Section 5 above.

Section 7. In the event an eligible employee wishes to remain on the plant seniority list, for the purpose of possible recall, he may elect to defer acceptance of his severance pay for a period of twelve (12) months. At any time during such period however, he may request his severance pay and his rights of recall and seniority shall terminate as of that date.

If such employee has not been recalled by the end of the twelve (12) month period he shall be paid his severance pay and his rights of recall and seniority shall terminate as of that date.

ARTICLE X

MEDICAL EXAMINATIONS

Section 1. The Company agrees to pay for any doctor's examination which may be necessary to obtain employment in the bakery.

ARTICLE XI

FOREMEN

Section 1. No foreman or supervisor shall perform any of the duties of any employee coming under the jurisdiction of this contract except in cases of emergency or relief.

ARTICLE XII

GRIEVANCES AND ARBITRATION

Section 1. All grievances shall be first taken up between the Plant Management and the Shop Steward. If these parties shall be unable to settle the grievance, then the Business Agent of the Union shall be called in, in an attempt to arrive at a settlement of the grievance. If these parties are unable to settle the grievance, the dispute will be settled as called for in Sections 2 and 3 of this Article.

Section 2. In the event that any grievance cannot be satisfactorily adjusted by the procedure outlined above, either of the parties hereto may demand arbitration and shall give written notice to the other party of its desire to arbitrate. No individual employee shall

have the right to invoke arbitration without the written consent of the Union. The Arbitration Board shall consist of three (3) persons, one selected by the Company and one selected by the Union. The two persons selected shall agree upon a third person who shall act as Chairman of the Arbitration Board.

Section 3. The decision or award of the Arbitration Board, or a majority thereof, shall be final and binding on both parties. If the third party to arbitration is not selected in ten (10) days from receipt of notice, the Director of the U. S. Conciliation Service shall be requested to make the appointment. The expense of the neutral arbitrator shall be borne equally by the parties.

Section 4. Pending negotiations or during arbitration there shall be no strikes, lock-outs, boycotts, or any stoppages of work.

ARTICLE XIII

JURY DUTY

The Company will pay an employee serving on jury duty the difference between fees paid him by public authority for such service and straight time earnings for the time which such service forces him to lose from his regularly scheduled hours of work. The time of such jury service shall not be counted as time worked in computing overtime.

ARTICLE XIV

ABSENCE BECAUSE OF DEATH

In case of death of an employee's father, mother, sister, brother, husband, wife, son, daughter, mother-in-law, or father-in-law, and such employee finds

it necessary to take time off to pay proper respect to the deceased and provided he attends the funeral, said employee will be paid straight time pay for the time he is off from his regularly scheduled work not to exceed three days of eight (8) hours each, provided such employee notifies a representative of the Company before absenting himself from work.

ARTICLE XV

MILITARY SERVICE

The Company and the Union agree to abide by the terms of the Selective Service and Training Act as amended from time to time or any other applicable law.

ARTICLE XVI

NO STRIKE

The Union agrees that there will be no strikes by members of the Union during the life of this Agreement, unless the Company refuses to comply with the arbitration provision of Article XII. The Company agrees that there will be no lockouts during the life of this Agreement.

ARTICLE XVII

UNION LABEL

It is agreed that the Company shall use the Union Label of the Bakery and Confectionery Workers' International Union of America, AFL-CIO, on its principal bread items and, in its discretion may use such label on any of its other products, in conformity with the rules and regulations of the Union Label Agreement entered into with the Union.

ARTICLE XVIII

NO WORK ON STRUCK GOODS

The Union does not guarantee that its members will pass through a picket line if any union, or unions, or organized groups of employees are on strike, or are locked out, and the Union has notified the Company in writing that such strike or lock-out is in progress.

It shall not be deemed a violation of this Agreement for employees covered hereunder, to refuse to bake, work on, or produce bakery products for any other bakery where a strike is in effect and where an authorized picket line is being maintained, if such refusal is not in violation of the Labor-Management Relations Act of 1947.

ARTICLE XIX

TERMS

This Agreement shall be in full force and effect from July 19, 1970, until and including July 21, 1973, and thereafter, until a new Agreement (the terms of which shall be retroactive to the above given date) has been consummated and signed, or this Agreement, after the expiration date, has upon seven days written notice been cancelled or terminated by the Local Union with the sanction of the Bakery and Confectionery Workers' International Union of America, AFL-CIO, or by the Employer.

IN WITNESS WHEREOF the Company and the Union have each caused this Agreement to be executed

in its behalf by its proper officers hereunto authorized this 31st day of July, 1970.

For the Company:
By: /s/ George F. Nolde, Jr.
President

For the Union:
By: /s/ Robert E. Gregory
Business Representative

NOLDE BROTHERS, INCORPORATED

NORFOLK, VIRGINIA

SCHEDULE "A"

	RATES EFFECTIVE				
	7/19/70	7/18/71	1/16/72	7/16/72	1/21/73
CLASSIFICATIONS					
MIXER AND INGREDIENT SCALER	$ 3.32	$ 3.52	$ 3.62	$ 3.82	$ 3.92
DIVIDER OPERATOR	3.11	3.31	3.41	3.61	3.71
MOLDER OPERATOR	3.11	3.31	3.41	3.61	3.71
OVEN, FEED AND DELIVERY	3.08	3.28	3.38	3.58	3.68
WRAPPING MACHINE SETTERS	3.12	3.32	3.42	3.62	3.72
WRAPPING MACHINE FEEDERS	2.94	3.14	3.24	3.44	3.54
FLOUR BLENDERS	2.98	3.18	3.28	3.48	3.58
HELPERS (ADVANCED)	2.92	3.12	3.22	3.42	3.52
HELPERS	2.86	3.06	3.16	3.36	3.46
CHECKERS	3.08	3.28	3.38	3.58	3.68
MAINTENANCE MECHANICS	3.50	3.70	3.80	4.00	4.10
MAINTENANCE HELPERS	3.08	3.28	3.38	3.58	3.68
THRIFT STORE HELPERS	2.65	2.85	2.95	3.15	3.25
GARAGE MECHANICS *	3.03	3.38	3.56	3.84	4.02

* Effective January 17, 1971, the rate of the Garage Mechanic shall be increased in the amount of Seven Cents (7¢).
Effective July 15, 1973, the rate of the Garage Mechanic shall be increased Eight Cents (8¢).

New inexperienced help will receive ten cents (10¢) less for the first ninety (90) days.

A jobber shall receive the rate of the classification in which he works.

Exhibit No. 2

BAKERY AND CONFECTIONERY WORKERS'
INTERNATIONAL UNION OF AMERICA
LOCAL NO. 358

3108½ West Leigh Street, Richmond, Virginia 23230
Phone 359-6536

May 16, 1973

Mr. George Nolde, Jr., President
Nolde Brothers Bakery
2520 East Broad Street
Richmond, Virginia 23223

Dear Mr. Nolde:

This is to advise you pursuant to the provisions of Section 8 (d) of the Labor Management Relations Act of 1947 that we wish to open our present agreemwnt with your Company for the purpose of negotiating certain changes.

We will gladly meet with you at a time and place mutually agreeable to both parties.

Yours truly,

/s/ Robert E. Gregory
Robert E. Gregory
Business Representative

REG:jc

cc: Mr. Vaughan Ball

Certified Mail—Return Receipt Requested

Exhibit No. 3

BAKERY AND CONFECTIONERY WORKERS'
INTERNATIONAL UNION OF AMERICA
LOCAL NO. 358

3108½ West Leigh Street, Richmond, Virginia 23230

Phone 359-6536

June 6, 1973

Mr. George Nolde, Jr.
Nolde Brothers Bakery
2520 East Broad Street
Richmond, Virginia 23223

Dear Mr. Nolde:

Enclosed is a copy of the Proposed Contract Changes for your Norfolk, Virginia Plant.

We will be glad to meeting with you at any mutually convenient time to discuss these changes. I would like to suggest June 20th for our first meeting date. Please advise me accordingly.

Yery truly yours,

/s/ Robert E. Gregory
Robert E. Gregory
Business Representative

REG:jc

Enclosure

NOLDE BROTHERS BAKERY
PROPOSED CONTRACT CHANGES

1. New Section—Both of the parties to this Agreement agree that they will not discriminate against any employee, or prospective employee, because of his age, race, sex, creed, color, national origin or union affiliation.
2. Fourth week vacation after fifteen years of service.
3. Article VI, Section 3—be amended to eight (8) hours daily guarantee.
4. Prior notice of Overtime Work—
   An employee must be given as much notice as is possible in the event he is going to be required to work overtime.
5. Article VIII—
   Use revised clause as adopted by Board of Trustees
   Increase contribution to provide:
   $ 300.00 Normal Pension Plan, A, costs additional 12¢
   $ 300.00 Vested Rights Plan B, Costs additional 6¢
   $ 300.00 Age and Service Plan C, costs additional 2¢
   Hospital—Surgical benefits for retirees Plan W1, costs additional 2¢
6. Employee to be credited with one day sick leave per month.
7. New Article XVIII to read as follows:
   PICKET LINES—
   It shall not be a violation of this Agreement, nor shall it be a cause for discharge or other disciplinary action if any employee refuses to enter upon property involved in a primary labor dispute, or if he refuses to go through or work behind any primary picket line, including the primary picket line of the Union, including primary picket lines at the Company's places of business.
8. Substantial wage increase.
9. When an employee works at least twenty four hours a week for four consecutive weeks the employee shall be classified on the higher rated job.
10. Criteria to become an advanced helper:
    After six months a helper shall be paid advanced helper rate.
11. Garage mechanic adjustment additional 8 cents per hour.
12. Wants an up to date Seniority List.

Exhibit No. 4

BAKERY AND CONFECTIONERY WORKERS'
INTERNATIONAL UNION OF AMERICA
LOCAL NO. 358

3108½ West Leigh Street, Richmond, Virginia, 23230
Phone 359-6536

August 20, 1973

Mr. George F. Nolde, Jr., President
Nolde Brothers Bakery
2520 East Broad Street
Richmond, Virginia 23223

Dear Mr. Nolde:

This is to notify you that the Bakery and Confectionery Workers International Union of America,

Local No. 358, hereby gives seven days notice, in accordance with Article XIX of its current labor agreement, to cancel its current labor agreement covering the Company's Norfolk, Virginia Plant.

Very truly yours,

/s/ Robert E. Gregory
Robert E. Gregory
Business Representative

REG:jc
Certified Mail—Return Receipt Requested

Exhibit No. 5

BAKERY AND CONFECTIONERY WORKERS'
INTERNATIONAL UNION OF AMERICA
LOCAL NO. 358
3108½ West Leigh Street, Richmond, Virginia 23230

Phone 359-6536

September 7, 1973

Mr. George F. Nolde, Jr., President
Nolde Brothers Bakery
P. O. Box 8035
Richmond, Virginia 23223

Dear Mr. Nolde:

During contract negotiations for the Norfolk Plant I had requested an up to date seniority list, showing dates of employment, classifications and wage rates. I would appreciate receiving this seniority list as soon as possible.

I would also like to have the following information on each employee from the Norfolk Plant:

The amount of vacation earned as of their last anniversary date and the amount of pro-rata vacation earned from the last anniversary date until September 1, 1973; and

The amount of severance pay that is due each employee.

With best wishes, I remain

Very truly yours,

/s/ Robert E. Gregory
Robert E. Gregory
Business Representative

REG:jc

CERTIFIED MAIL—RETURN RECEIPT REQUESTED

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

(Title Omitted in Printing)

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

(Filed June 10, 1974)

Defendant, Local No. 358 (hereinafter referred to as "Union"), respectfully moves the Court to deny defendant's motion for summary judgment, and to grant summary judgment in plaintiff's favor. There are no genuine issues of material fact with respect to plain-

tiff's cross-motion for summary judgment and plaintiff is entitled to a judgment as a matter of law. Plaintiff asks that the Court deny defendant's motion for summary judgment, and that the Court grant plaintiff's cross-motion for summary judgment on the pleadings filed herein, on the affidavit of Robert E. Gregory, and on the memorandum of law filed herewith.

* * *

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

(Title Omitted in Printing)

AFFIDAVIT

I, Robert E. Gregory, of the City of Richmond, State of Virginia, being first duly sworn, state the following:

I am the Business Representative for Local No. 358 of the Bakery and Confectionery Workers International Union of America. I participated in and represented the Union in the third and final contract negotiations which were held on August 31, 1973.

During the course of that meeting, the Company took a recess, and at the end of the recess announced for the first time its intention to close down the plant permanently that night. I advised the Company repsentatives that the employees would be entitled to their vested severance pay rights along with their vested vacation pay if the Company were to close down. At the time of these discussions, the Company had not closed down its operations, and thereafter its operations

continued past midnight into the next day. At no time did the employees go out on strike. From the time the collective bargaining agreement expired up to and including the time the Company closed down its operation, the employees worked for the Company under the same terms and conditions of employment as contained in the expired collective bargaining agreement.

The intention of my August 20, 1973 letter, which is Exh. 4 to the Company's motion for summary judgment, was to give the Company a chance to prepare itself for any possible strike, such as disposing of refrigerated merchandise. The seven day's notice given in my August 20, 1973, letter was the result of a request made by the Company in negotiations many years before for this purpose. The parties always intended to continue the wages, hours and working conditions specified in the expired collective bargaining agreement so long as the employees continue to work during negotiations for a new agreement. This was the past practice of the parties as well.

/s/ Robert E. Gregory
Robert E. Gregory

(Jurat Omitted in Printing)

IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

(Title Omitted in Printing)

ORDER

(Filed September 19, 1974)

For the reasons stated in the memorandum of the Court this day filed, it is ADJUDGED and ORDERED that plaintiff's motion for summary judgment be, and the same is hereby, denied; the motion of defendant for summary judgment be, and the same is hereby, granted, and the complaint herein stands dismissed.

Let the Clerk send a copy of the memorandum and this order to all counsel of record.

/s/ Robert R. Merhige
United States District Judge

Dated: September 19, 1974